IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 85 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRA S KAMDAR

Versus

RATILAL S PAREKH

Appearance:

1. Civil Revision Application No. 85 of 1989

MR DD VYAS for Petitioner No. 1

MS KUSUM M SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/12/2002

ORAL JUDGEMENT

#. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner is the original plaintiff of Regular Civil Suit No.1052 of 1979. The case of the plaintiff in the said suit is that, he is a tenant of the suit premises and the defendant is the owner of the property known as "Bakul" situated in Janta Society, Rajkot. It is the case of the plaintiff that, he has hired the said premises at the monthly rent of Rs.650/- from 1.5.1968 and that the defendant landlord had taken the deposit of Rs.1300/- from him at the time when he hired the suit premises. It is also the case of the plaintiff that, the defendant had purchased the said property from one Babulal Anandji for Rs.55000/- on 26.10.1967, but, thereafter, he has not made any improvement in the suit property. It is also the say of the plaintiff that, in the Municipal Corporation annual rental value of the suit property is stated to have been at Rs.325/- per month. It is also the case of the plaintiff that the defendant (the original landlord of the suit premises), in order to circumvent the provisions of the Bombay Rent Act, filed Civil Misc. Application No.104 of 1968 for the purpose of determination of the standard rent and ultimately, the dispute was settled by way of compromise purshis between the parties and on the basis of the said compromise, the standard rent was fixed at Rs.650/-. However, it is the case of the plaintiff that the standard rent at the rate of Rs.650/- was fixed on the basis of compromise and that the Court had not determined the standard rent on its own. It is also the case of the plaintiff that the said decree is, therefore, null and void and that the same is obtained by practising fraud upon the Court. It is also the case of the plaintiff that, he has, subsequently, filed Civil Misc.Application No.119 of 1973 for determining the standard rent. In the said application, the defendant took the plea that the standard rent is already fixed by the Court and that such application is barred by res judicata. In that view of the matter, the plaintiff has filed the present suit. Ultimately, after recording the evidence and hearing the parties, the Court allowed the suit and the order passed in Standard Rent Application, being Civil Misc. Application No.104 of 1968 was set aside by the trial Court on the ground that the same is void and ineffective. Being aggrieved by the said decree of the trial court, the respondent herein preferred the appeal, being Civil Appeal No.62 of 1982. The learned Appellate Judge allowed the said appeal and set aside the decree passed by the trial Court. Being aggrieved by the said order of the Appellate Court, the petitioner - original plaintiff has filed this revision application before this Court.

#. It is argued by Mr.Vyas, learned advocate, for the petitioner, that the trial Court was right in setting aside the order, which was passed earlier in the standard rent application between the parties, being Civil Misc. Application No.104 of 1968. He submitted that, earlier, standard rent was fixed by consent of the parties. However, the said fixation is illegal and the consent of the plaintiff was obtained by practising fraud.

#. I have heard Mr.Vyas at length and I have gone through the judgment of the Appellate Court as well as the judgment of the trial Court. It is required to be noted that, in earlier standard rent application, being Civil Misc. Application No.104 of 1968, the standard rent was fixed by the Court on the basis of the compromise on 22.3.1968 and thereafter, the parties have acted upon the said consent order of the trial Court and ultimately, the present suit is filed for setting aside the said consent decree on 22.3.1977. The Appellate Court has rightly held that the present suit filed by the petitioner herein is clearly time barred. Even though the present petitioner was aware about the aforesaid consent decree since 1968, the present suit seems to have been filed in the year 1977 or in the year 1976 as observed by the Appellate Court. In between, the present petitioner has already instituted another application for fixation of standard rent, being Civil Misc. Application No.119 of 1973. The Appellate Court is right in coming to the conclusion that the suit filed by the present petitioner is clearly time barred. The Appellate Court has given appropriate reasons while deciding the aforesaid question of limitation in para 16 at page 17 of the compilation.

#. Considering the aforesaid facts and circumstances of the case, the suit of the present petitioner - plaintiff is clearly time barred and accordingly, the Appellate Court is absolutely justified in allowing the appeal filed by the present respondent. It is required to be noted that, the plaintiff started paying the rent as agreed by him and for a long period he continued to pay the said rent and accordingly he acted upon the said consent terms for so many years and subsequently he filed the present suit. Considering the aforesaid aspect, it cannot be said that the plaintiff was not aware about the said consent order passed by the trial Court, which was passed many many years back. It is, therefore, clear that the suit in question is barred by limitation as the same was required to be filed within three years from the date of compromise. Under these circumstances, I do not find any substance in this revision application. Hence,

this revision application is rejected. Rule is discharged with no order as to costs. Ad-interim relief granted earlier, if any, stands vacated.

(P.B.Majmudar,J)
(pathan)